Ramli bin Zakaria & Ors v Jusoh bin Hussain

HIGH COURT (ALOR SETAR) — CIVIL APPEAL NO 12-09-90
KC VOHRAH J
30 JUNE 1993

Civil Procedure *— Appeal — Record of appeal — Filing of — Whether appeal record was only filed when filing fee was paid — Discretion of senior assistant registrar to allow filing of a document before fee chargeable on the document is paid*

The appellants had filed their appeal in the High Court, which was acknowledged by the senior assistant registrar ('the SAR'), and a copy of the bundle containing the memorandum of appeal and other documents, which comprised the appeal record, was served on the respondent well before the expiry date for service. However the RM4 filing fee for the appeal record was only paid after the prescribed time for filing an appeal and the respondent claimed that the appeal record had been filed out of time and that he had therefore not been served with an appeal record that had been duly filed. He argued that there was therefore no proper appeal before this court.

Held, dismissing the respondent's objection:
When the two copies of the bound bundle of documents were officially acknowledged as having been filed by the SAR, there was a filing of both the memorandum of appeal and the appeal record which were contained in the bundle. Section 5 of the Fees Act 1951 by implication, vests a discretion in the SAR as an officer of the court to allow the filing of a document before the fee chargeable on the document is paid. There is also no rule in the Rules of the High Court 1980 which states that a fee in respect of filing a document must be paid before the document is filed. In this case, the SAR allowed the filing of the appeal record before collecting the fee therein and therefore, the appeal record was filed and served on the respondent within the time limit.

[Bahasa Malaysia summary

Perayu telah memfailkan rayuan mereka ke Mahkamah Tinggi, yang telah diaku terima oleh penolong kanan pendaftar ('SAR'), dan sesalinan ikatan yang mengandungi memorandum rayuan dan dokumen lain, yang terdiri daripada rekod rayuan, telah disampaikan kepada responden awal-awal lagi sebelum tarikh habis tempoh untuk penyampaian. Tetapi, fee RM4 untuk memfailkan rekod rayuan hanya dibayar selepas tempoh untuk memfail rayuan dan responden berhujah bahawa rekod rayuan itu telah difailkan di luar had masa dan dengan itu beliau tidak disampaikan dengan rekod rayuan yang telah difailkan

dengan sempurna. Oleh itu, beliau mendakwa bahawa tidak ada rayuan yang sempurna di hadapan mahkamah ini.

Diputuskan, menolak bantahan responden:
Apabila dua salinan ikatan dokumen diaku terima oleh SAR dengan rasmi sebagai telah difailkan, kedua-dua memorandum rayuan dan rekod rayuan yang dikandungi di dalam ikatan itu sememangnya difailkan. Seksyan 5 Akta Fee 1951 secara tersirat meletakhakkan budibicara pada SAR sebagai seorang pegawai mahkamah untuk membenarkan suatu dokumen difailkan sebelum fee yang perlu dibayar sememangnya dibayar. Juga tidak ada kaedah di dalam Kaedah-Kaedah Mahkamah Tinggi 1980 yang menyatakan bahawa fee untuk memfailkan suatu dokumen mesti dibayar sebelum dokumen itu difailkan. Di dalam kes ini, SAR telah membenarkan rekod rayuan itu difailkan sebelum mendapat fee baginya dan oleh itu, rekod rayuan itu telah difail dan disampaikan kepada responden dalam had masa yang ditetapkan.]

Notes
For cases on the filing of a record of appeal, see 2 *Mallal's Digest* (4th Ed) paras 426–430.

Case referred to
1 *Jumatsah bin Daud & Anor v Voon Kin Kuet & Anor* [1981] 1 MLJ 254 (refd)

Legislation referred to
Fees Act 1951 s 5

E Mayandi (*Mayandi & Panjaram*) for the appellants.
S Visvanathan (*Syarikat Visva*) for the respondent.

Cur Adv Vult

KC Vohrah J: There is a preliminary objection by Encik Visva for the respondent that there is no proper appeal before this court and that the appeal should be dismissed as the appeal record in this case which was served on the respondent had not been filed in the High Court registry within the prescribed time. The appellants dispute that and said that it was filed well within time.

The appellants in this case had to file their appeal record (a record of documents stipulated under O 49 r 3A(1) of the Rules of the Subordinate Court ('the RSC')) and their memorandum of appeal (a document stipulated under O 55 r 2(1) of the Rules of the High Court 1980 ('the RHC')) in the High Court by 11 December 1990. Well before the date, on 27 November

1990, duplicate copies of a bound bundle of documents marked as 'record of appeal' by the appellants' solicitors were filed in the High Court and the fact of filing of the duplicate copies on that date is acknowledged by an official stamp and the signature of the senior assistant registrar ('the SAR') of the High Court Malaya, Alor Setar on the cover of each copy.

Each bundle contains the memorandum of appeal and other documents which comprise the appeal record. Well before the expiry date for service, a copy of the bundle was served on the respondent.

The filing fee for the memorandum of appeal is RM20 (see item 63A(a)(i), App B of the RHC) while that for the appeal record is RM4 (see item 64).

The appellants had forwarded a praecipe fee of RM20 in stamps when the request for filing was made. The SAR on 1 December 1990 wrote a letter to the appellants' solicitors requesting the solicitors to remit a praecipe fee of RM4 to pay for the appeal record and stating that the praecipe fee of RM20 which had been paid was for the memorandum of appeal. On 12 December 1990, the praecipe fee was acknowledged as having been paid.

It is this subsequent payment of the fee on 12 December 1990 for the appeal record which Mr Visva says shows that the appeal record was filed out of time and that the respondent had not been served with an appeal record that had been duly filed. He argued that a document is filed when the fee prescribed in App B in the RHC has been paid; until then there is no filing of the document. He relies on *Jumatsah bin Daud & Anor v Voon Kin Kuet & Anor*[1] to say that a document is filed when the praecipe is cancelled, but I have not been able to find anything to that effect in that case.

In my view, when the two copies of the bound bundle of documents were officially acknowledged as having been filed by the SAR, there was a filing of both the memorandum of appeal and the appeal record which were contained in the bundle. The praecipe fee of RM20 remitted by the appellants was only sufficient for the memorandum of appeal and what the SAR did was not a postponement of the filing of the appeal record (there was nothing at all in her letter or any court record indicating that) but a request to the appellant to pay the filing fee for the appeal record after the appeal record had been filed. The SAR could have refused to file the record of appeal until the fee (imposed by O 91 read with App B of the RHC, the order being a written law relating to item 4 read with item 7 of the Federal List of the Federal Constitution) was paid in accordance with the terms of s 5 of the Fees Act 1951 which reads:

> The officer of any court, public office or department required to do anything which a fee or payment is chargeable or prescribed under this Act or other written law relating to any matter in the Federal List may decline to do that thing until the fee is paid or the payment is made.

Clearly the above provision, by implication, vests a discretion in the SAR as an officer of the court to allow the filing of a document before the fee chargeable on the document is paid. Then too there is no rule in the RHC

A which states that a fee in respect of filing a document must be paid before the document is filed. I am satisfied that in this case the SAR allowed the filing of the appeal record before collecting the fee therein and the appeal record was filed in time and served on the respondent within time. In the circumstances the objection of Mr Visva must fail.

B *Objection dismissed.*

Reported by Jeanne Tan

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